

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF)
2 Y. S. PACK,)
3 Appellant,)
4 vs.)
5 STATE OF WASHINGTON,)
6 DEPARTMENT OF ECOLOGY,)
7 Respondent,)
8 THE TULALIP TRIBES OF)
9 WASHINGTON,)
Intervenor.)

PCHB No. 213

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 THIS MATTER being an appeal of a cancellation of a reservoir permit;
11 having come on regularly for hearing before the Pollution Control Hearings
12 Board on the 22nd day of February, 1974, at Lacey, Washington; and
13 appellant Y. S. Pack appearing pro se, respondent Department of Ecology
14 appearing through its attorney, Wick Dufford, and intervenor, The Tulalip
15 Tribes of Washington appearing through its attorney, Lewis A. Bell; and
16 Board members present at the hearing being Walt Woodward (presiding) and
17 Mary Ellen McCaffree; and the Board having considered the sworn testimony
18 exhibits, records and files herein and arguments of the parties and having

1 entered on the 25th day of March, 1974, its proposed Findings of Fact,
2 Conclusions of Law and Order, and the Board having served said proposed
3 Findings, Conclusions and Order upon all parties herein by certified mail,
4 return receipt requested and twenty days having elapsed from said service;
5 and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 25th day of
11 March, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's Final
13 Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 23rd day of April, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

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17 Walt Woodward
18 WALT WOODWARD, Chairman

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20 Mary Ellen McCaffree
21 MARY ELLER McCAFFREE, Member

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26 , FINAL FINDINGS OF FACT,
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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
Y. S. PACK,

Appellant,

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STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent,

THE TULALIP TRIBES OF
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An informal hearing on this appeal came on before Board members W. A. Gissberg, Walt Woodward and Mary Ellen McCaffree in Lacey, Washington on February 22, 1974. W. A. Gissberg having convened the hearing, disclosed to the parties that he owned land within The Tulalip Reservation. Accordingly, at the request of the parties, he disqualified himself from any consideration of the appeal and removed himself from the hearing, thereupon Walt Woodward presided.

EXHIBIT A

1 Appellant, Y. S. Pack, appeared pro se; respondent, Department of
2 Ecology, appeared through its attorney, Wick Dufford, and intervenor,
3 The Tulalip Tribes of Washington appeared through its attorney,
4 Lewis A. Bell. Eugene Barker, Olympia court reporter, recorded the
5 proceedings.

6 Witnesses were sworn and testified. Exhibits were admitted and
7 counsel and Mr. Pack made closing arguments.

8 From testimony heard, exhibits examined and arguments considered,
9 the Pollution Control Hearings Board makes these

10 FINDINGS OF FACT

11 I.

12 In 1962, Y. S. Pack, 15820-38th N.E., Seattle, Washington,
13 purchased 160 acres of land on the Tulalip Reservation in Snohomish
14 County. Mr. Pack's (hereinafter appellant) purposed use of his
15 property was to subdivide it, sell lots and develop a 40 acre
16 recreational lake in the center of the property. Mission Creek,
17 a free flowing stream, runs through the appellant's property.

18 II.

19 In 1962 or 1963 the appellant filed with the Planning Commission
20 and the county commissioners of Snohomish County a preliminary platting
21 proposal for subdividing his property. This preliminary application
22 expired due to unforeseen circumstances and the appellant filed a new
23 platting application, which was denied. The Planning Commission
24 suggested to the appellant a list of requirements to be met before
25 the platting application could be approved. The appellant reapplied
26 and was then told by the county commissioners to hold his platting

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1 application until such time as The Tulalip Reservation Comprehensive
2 Plan was completed and adopted by Snohomish County. Appellant
3 testified that he had a valid application, but that it was never
4 perfected because of the moratorium declared by the Snohomish County
5 Commissioners on 3000 acres of land, which included his 160 acres,
6 until The Tulalip Reservation Comprehensive Plan was approved.

7 III.

8 Appellant was granted on July 29, 1964, Permit No. R-292 to
9 construct a reservoir and store for beneficial use the unappropriated
10 waters of the State of Washington under application No. R-17897. The
11 permit was granted by the Department of Conservation and Development,
12 Division of Water Resources (now incorporated into the Department
13 of Ecology) (hereinafter respondent) subject to existing rights and
14 to certain limitations and provisions as to size and shape and depth
15 of the impounding structure and as to the location, size and type
16 of valve and outlet structure. The permit required that the
17 construction of the earth fill dam be completed by August 1, 1966
18 and that the complete application of the water to its intended use
19 be made by August 1, 1967.

20 IV.

21 On September 19, 1969, The Tulalip Tribes (hereinafter
22 intervenor) through its attorney, Lewis A. Bell, protested in
23 writing to Mr. M. C. Walker, regarding the appellant's permit
24 No. R-292. Intervenor stated the State of Washington has no
25 unappropriated waters on the Tulalip Reservation, nor any right,
26 title, or interest in and to the waters of the Tulalip Reservation

27 FINDINGS OF FACT,
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1 and thus had no jurisdiction to grant anyone a permit.

2 V.

3 On September 23, 1969, Glen H. Fielder, Assistant Director of
4 the Division of Water Management, sent a letter to the intervenor
5 in which he stated that the intervenor's above mentioned letter had
6 been placed in the file pertaining to Permit No. 292, but that
7 his office did not consider it appropriate to revoke the permit or
8 deny further extensions thereof based solely upon the objections of
9 the Tulalip Tribes.

10 VI.

11 Pursuant to appellant's request on July 19, 1970 for an extension of
12 Permit R-292 and the time thereof within which to complete construction,
13 the construction having been postponed because of the City of
14 Marysville's delay in making available a supply of potable water to the
15 area of his property, the respondent granted an extension until August 1,
16 1971. However, the respondent advised the appellant in writing at
17 that time that:

18 "in reviewing your permit, it is noted that the
19 original application was filed on May 8, 1963,
20 and permit issued on July 27, 1964. Statutory
21 provisions require that projects under permit
22 be pursued with diligence and we do consider
23 that ample time has been provided for completion
24 of this project. Therefore, we must advise that
25 the present extension is the final one we will
26 favorably consider under this stage of processing."

27 VII.

28 Respondent received a letter from Mr. Sam Kraetz, Snohomish
29 County Commissioner, dated August 26, 1971, which was written on
30 behalf of the appellant. He urged a further extension of Permit

31 FINDINGS OF FACT
32 CONCLUSIONS OF LAW

33 AND ORDER

1 No. R-292 be granted to the appellant. Mr. Kraetz's letter stated
2 that the Tulalip Reservation Comprehensive Plan had not yet been
3 adopted by the county commissioners of Snohomish County and that
4 this was delaying the approval of the platting and subdivision of the
5 appellant's property. This resulted in an extension of appellant's
6 permit to August 1, 1972.

7 VIII.

8 On June 26, 1972, the Board of Snohomish County Commissioners
9 adopted The Tulalip Reservation Comprehensive Plan. Mr. Sam Kraetz
10 signed the document as the Chairman of the Board of Commissioners.
11 However, the appellant has not yet filed his plat application for the
12 subdivision of his property with Snohomish County.

3 IX.

14 On August 24, 1972, the respondent advised the appellant by
15 letter that action would be initiated to cancel permit R-292 unless
16 within 60 days from the date of the letter the appellant sent to
17 the respondent (1) the county's "Comprehensive Plan" and (2) \$5.00
18 remittance, the statutory extension fee. The letter further
19 stated that if these two requirements were complied with by the
20 appellant, the request for extension of his permit would be
21 reviewed once again, otherwise the permit would be cancelled.

22 X.

23 Appellant partially replied to respondent's request by sending
24 his check for the \$5.00 on September 1, 1972, but appellant suggested
25 in his letter that he did not believe that he was responsible for the
26 Comprehensive Plan of Snohomish County.

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1 XI.

2 During the eight years the appellant had Reservoir Permit
3 No. 292 only a minor amount of site clearing had been accomplished
4 on the appellant's property and the development of same apparently
5 has been indefinitely suspended. Construction on his dam is not
6 as yet started, nor has any of the waters been impounded.

7 XII.

8 On October 24, 1972, the appellant received notice that his
9 Reservoir Permit No. 292 had been cancelled by the respondent as of
10 that date and this is the subject matter of this review.

11 XIII.

12 Any conclusion of law hereinafter recited which should be deemed
13 a finding of fact is hereby adopted as such.

14 From these findings the Pollution Control Hearings Board comes
15 to these

16 CONCLUSIONS

17 I.

18 The instant request for review was timely filed and the
19 Pollution Control Hearings Board has jurisdiction of this matter.

20 II.

21 Section 33, Chapter 117, Laws of 1917 and RCW 90.03.320 provide
22 as follows:

23 "Actual construction work shall be commenced
24 on any project for which permit has been
25 granted within such reasonable time as shall
26 be prescribed by the supervisor of water
resources, and shall thereafter be prosecuted
with diligence and completed within the
time prescribed by the supervisor. The

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AND ORDER

1 supervisor, in fixing the time for the
2 commencement of the work, or for the completion
3 thereof and the application of the water to
4 the beneficial use prescribed in the permit, shall
5 take into consideration the cost and magnitude
6 of the project and the engineering and physical
7 features to be encountered, and shall allow such
8 time as shall be reasonable and just under the
9 conditions then existing, having due regard for the
10 public welfare and public interests affected: and,
11 for good cause shown, he shall extend the time or
12 times fixed as aforesaid, and shall grant such
13 further period or periods as may be reasonably
14 necessary, having due regard to the good faith
15 of the applicant and the public interests affected.
16 If the terms of the permit or extension thereof,
17 are not complied with the supervisor shall give
18 notice by registered mail that such permit will
19 be canceled unless the holders thereof shall
20 show cause within sixty days why the same should
21 not be so canceled. If cause be not shown, said
22 permit shall be canceled."

3 III.

14 Within the meaning of the foregoing statute, appellant has not
15 shown "good cause" why respondent should grant extension of time
16 within which he could commence work, or complete the same and apply
17 the water to the beneficial uses prescribed in the permit.

18 IV.

19 It would not be in the public interest to further extend the
20 time within which applicant may apply the water to the uses prescribed
21 in the permit.

22 By simply filing a piece of paper with the state an applicant
23 cannot reserve a high priority resource indefinitely.

24 V.

25 This Board believes that the respondent's request that the
26 appellant supply "the county's Comprehensive Plan" as a condition for

27 FINDINGS OF FACT,
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1 reviewing his permit extension served only to confuse the issue.

2 It was not necessary for the appellant to plat his property in order to
3 construct his dam and impound the waters of Mission Creek for his
4 recreational lake, except insofar as such a permit or application for
5 such a permit might show diligence on the appellant's part.

6 VI.

7 Being prepared to dispose of this matter solely on the basis of
8 state statutes and regulations, this Board does not herein pass
9 judgment on intervenor's contentions or motion.

10 VII.

11 Respondent's cancellation of the subject permit was in
12 accordance with the provisions of RCW 90.03.320 and was and is in all
13 respects lawful, mandatory and required.

14 VIII.

15 Any finding of fact which should be deemed a conclusion of law
16 is hereby adopted as such.

17 From which comes this

18 ORDER

19 The appeal is denied and respondent's Order of Cancellation of
20 the permit is affirmed.

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-6 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 DONE at Lacey, Washington, this 25th day of March, 1974.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 Mary Ellen McCaffree
6 MARY ELLEN McCAFFREE, Member

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